THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

W.P.No. 17172 of 2005

Dated 15-11-2005

Between:

B.Harshitha

…Petitioner

And

Govt. of A.P. and others

…Respondents

W.P.NO.16995 OF 2005

Between:

L.Gayatri Gottumukkala

…Petitioner

And

Govt. of A.P. and others

…Respondents

W.P.No.17455 of 2005

Between:

S.Nikitha Goud

…Petitioner

And

Govt. of A.P. and others

…Respondents

***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

W.P.Nos.17172, 16995 & 17455 of 2005

% 15.11.2005

Between:

B. Harshitha and others

…Petitioners

AND

The Government of Andhra Pradesh,

Rep. by its Secretary,

Department of Youth, Advancement, Tourism and Culture (SPORTS),

Secretariat, Hyderabad and others

...Respondents

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! Counsel for the Petitioners: Sri B.Chandrasen Reddy

Sri Nooty Rama Mohana Rao

^ COUNSEL FOR THE RESPONDENTS: Sri D.V. Nagarjuna Babu,

Sri Kotam Raju Janardhana Rao,

Sri Vivekanand,

G.P. for Higher Education,

Sri B.B. Krishna Mohan,

Sri D.V. Sitarama Murthy

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> Head Note:

? CITATIONS:

(2002) 7 SCC 258

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

W.P.Nos. 17172, 16995 & 17455 of 2005

COMMON JUDGMENT:

The petitioners in these three writ petitions seek *Writs of Mandamus* declaring the action of the respondents, particularly N.T.R. University of Health Sciences (for short '*the University*'), and the Sports Authority of Andhra Pradesh, in not following the scheme and procedure contained in G.O.Ms.No.27, dated 04-06-2005, in the matter of selection of candidates against the seats reserved for sports category.

2. The admissions into the First Year of M.B.B.S. and B.D.S., in the Government and Private Medical Colleges in the State of A.P., are made through a process of centralized counselling, by the University. Candidates are selected on the basis of their performance in the common entrance examination held for this purpose.

3 . Apart from providing reservations for socially backward classes, physically handicapped candidates, children of
ex-servicemen, etc., the University provided for reservation of 0.5% of seats in favour of candidates, who have excelled in the games and sports. Counselling for this category is undertaken separately.

4 . Petitioner in W.P.No.16995 of 2005 secured the rank, 33,598. The rank of the petitioner in W.P.No.17172 of 2005 is 13,340, and that of the petitioner in W.P.No.17455 of 2005 is 17,362. They were not selected during the general counselling. They have put forward their claims for sports category. While the petitioner in W.P.No.17172 of 2005 was selected for a seat in the sports category in B.D.S. course in Osmania University area, petitioners in other two writ petitions were not selected to any course.

5 . The Government of Andhra Pradesh issued G.O.Ms.No.27, dated 04-06-2005,

prescribing the procedure for selection of candidates for sports category. The list of events recognized for this purpose, the priorities in which the candidates are to be arranged, depending upon the nature of their performance; was also indicated. As many as 90 priorities are stipulated, ranging from Gold Medal in Olympics, at senior level, to participation in Inter-District Championship, for school games. Certain modifications were also carried out through G.O.Ms.No.31, dated 29-06-2005, and they do not have much of a bearing in the present context.

6. The main grievance of the petitioners is that the officials of the University and the Sports Authority of A.P., have displayed a list of candidates, arranged in order of priority, at 5:00 p.m.
on 28-07-2005, but during the midnight, that followed, a changed and altered list was published. They contend that the counselling on the next day was not conducted properly and that the priorities were changed indiscriminately. By referring to various provisions of G.O., they contend that the priorities arranged by the respondents were incorrect and thereby, the petitioners were denied the admission in the First Year of M.B.B.S. The incidents, that have taken place soon after the counselling, have also been narrated in the affidavits filed in support of the writ petitions.

7. In the respective counter affidavits filed by the University and the Sports Authority of A.P., it was pointed out that the list of candidates in the order of priority was prepared after verifying the certificates, evidencing the accomplishments of the candidates, and the alterations were necessitated, on account of noticing some mistakes. It is also urged that the ultimate selection was based upon the actual verification of the certificates of the respective candidates, and that the selections were conducted strictly in accordance with the procedure prescribed under the G.O.

8. Sri Nooti Rama Mohana Rao, learned counsel for the petitioner in W.P.Nos.16995 of 2005 and 17455 of 2005 lead the arguments in all the writ petitions; and Sri

B.Chandrasen Reddy, learned counsel for the petitioner, in W.P.No.17172 of 2005, supplemented the same.

9. The thrust of their arguments is that the priorities that were assigned to the petitioners at the initial stages were downgraded and that the same resulted in denial of admission to the petitioners in the M.B.B.S course. By referring to the certificates obtained by the petitioners and the relevant priorities specified in the annexure to the G.O., they contend that the respondents did not follow the procedure properly. A specific contention was raised on behalf of the petitioner in W.P.No.17172 of 2005, to the effect that, the 7th respondent therein, viz., Ramya Subhashini, who was a local candidate of Andhra University area, was wrongly admitted against a seat in the Osmania University area, and that on account of the same, the petitioner was denied the seat in First Year of M.B.B.S. course.

10. Sri D.VNagarjuna Babu, learned Standing Counsel for the University submits that the priorities of the candidates were decided on the basis of the opinion tendered by the Sports Authority, and that the ultimate selections were made after due verification of the claims of the respective candidates. As regards the contention advanced by the petitioner in W.P.No.17172 of 2005, learned counsel submits that though the respondent No.7 therein stated in the application form that she is the local candidate of Andhra University area, during the course of verification of the certificates, it emerged that she has to be treated as the local candidate of Osmania University area. He justified the action of the University in doing so, by referring to various clauses in the prospectus, touching on the definition of 'local candidate'.

11. Sri Kotam Raju Janardhana Rao, learned Standing Counsel for the Sports Authority of A.P., assisted the Court, by placing almost the entire record and by explaining the selection process, with reference to each of the petitioner. He submits that the alteration in the list of priorities was necessitated on account of some doubt, that existed at the time of evaluation of the certificates, and that necessary

corrections were made strictly in accordance with the priorities stipulated under the G.O.

12. Sri Vivekanand, learned counsel for respondent No.7 in W.P.No.17172 of 2005, submits that his client did not study 9th class at all, and appeared in S.S.C. as a private candidate. He contends that the major portion of her study as well as residence, out of 7 years, preceding her appearance in the qualifying examination, was in the Osmania University area, and accordingly, she was treated as the local candidate of that area. He contends that in the application form, his client inadvertently stated that she is the local candidate of Andhra University area, and that during the counselling, she was treated as the local candidate of Osmania University area, on the basis of the relevant certificates.

13. In the matter of selection of candidates against the seats reserved in favour of the Sports Category, the Government issued G.O.Ms.No.27, dated 04-06-2005, just at a time when the admissions into First Year of M.B.B.S. and B.D.S. Courses was to commence. A substantially different procedure from the one, that prevailed in the previous academic year, was brought about. The list of games and sports recognized for this purpose was expanded and the number of priorities has also been increased. The authorities entrusted with the selection process were not fully accustomed to, or acquainted with the new procedure. It was in this context, that a list of candidates was prepared, arranging them in the order of priorities. On noticing some discrepancies, the list was altered. It is but natural, that the candidates whose priorities are altered to their detriment, felt aggrieved. The petitioners are some of them.

14. The writ petitions were filed in the first week of August 2005. The learned Standing Counsel for the University and Sports Authority were granted time to file counter affidavits and to produce the record. The candidates who may be effected, in the event of any relief being granted to the petitioners; were also permitted to be

impleaded.

15. On hearing the learned counsel for the parties on 16-09-2005, this Court noticed that the claims of the petitioners herein deserve to be considered afresh. Therefore, a reasoned order was passed on that day, directing that the Registrar of the University shall convene meeting on 22-09-2005, wherein the Directors of Sports Authority, the petitioners and their parents, the candidates whose ranks were altered and admitted into the course, together with their parents, shall be present along with their original records. Such a meeting was held. Thereafter, it was reported to this Court that on verification of the relevant certificates of all the candidates, who are present at the meeting, it was found that the selections, made on the earlier occasion, did not suffer from any infirmity.

16. To remove any doubt in the minds of the petitioners, the learned counsel for the petitioners were permitted to make submissions, touching on the correctness of the priorities accorded by the University and the Sports Authority. On a close examination of the priorities, with reference to the certificates of the petitioners herein, it emerged that the procedure prescribed under G.O.Ms.No.27, was strictly followed. Therefore, no relief can be granted on that count.

17. Extensive submissions were made in W.P.No.17172 of 2005, touching on the status of respondent No.7 therein, as a local candidate of Osmania University. The Universtiy has made, the original record relating to respondent No.7, available to this Court. From the record, it is evident that in her application form bearing No.06385, with registration No.09765, she stated that she is the local candidate of Andrha University area. She claimed such a status, on the strength of the fact that she did not study 9th Class, appeared 10th Class examination from Bishop Azaraiah High School, Vijayawada, Krishna District, and studied Intermediate in S.K.V.S

Junior College, in the same town. The study of S.S.C and Intermediate course was spread between the years 2001-02 and 2003-04. The columns relating to 9th Class were left blank. The petitioner is said to have studied 6th class in Kothagudem in Khammam District, 7th and 8th classes in Ranga Reddy District. The authority, which verified the application form, made the following endorsement:

"Study certificate from VI to IX not enclosed"

18. The 7th respondent did not come up for selection in the general category. Her claim was examined against the sports category on 29-07-2005. On that day she was issued registration-cum-verification form. The concerned officer made an endorsement to the following effect:

> "Kept pending, as study certificates of 5th, 6th, 7th, 8th, 10th or Intermediate, are required".

On the next day, an option form was issued to her. On that also it was endorsed,

> "Kept pending as study certificates are required".

19. It was thereafter, that the petitioner submitted a bonafide certificate dated 30-07-2005, in relation to her study from 7th to 8th from Panineeya Mahavidyalaya Public School, Dilsukhnagar, and study certificate issued by Barat School, in relation to study of 3rd to 6th class. From this it becomes evident that the study certificate from 7th to 8th was obtained on 30-07-2005 i.e. is after counselling in the sports category.

20. Serious controversy existed as to whether the 7th respondent can be treated as a local candidate of Osmania University area or Andhra University area, having regard to her assertion that she did not study 9th class at all and appeared in 10th class as a private candidate. The Rules governing the issuance of S.S.C. certificate and the provisions of the Presidential Order were considered elaborately. The necessity to record a finding on those aspects does not arise in the present context, for the

following reason.

21. The competition for admission into medical courses is very stiff and heavy. The candidates were required to enclose all the relevant certificates in support of their claim, particularly in the context of their status as local candidate of any particular area, along with the application. In the prospectus a clause was incorporated to the effect that applications that are not accompanied by the required certificates or with incomplete entries, shall stand rejected atomatically. Clause 5.2 of the prospectus reads as under:

> "Applications received after last date and time and those unacccompanied by the required certificatres or with incomplete entries shall stand rejected automatically. Application from ineligible candidates summarily rejected. Postal delay or loss in transit will be not condoned".

22. The claim of any candidate with reference to the local area can be considered only on the basis of the study certificate issued by the institution, where the candidate has studied. At the threshold of the application, a note was added, which was required to be read by the candidates before the applications are filled up. The note reads asunder:

> "Read the Regulations carefully before filling up of the application.
>
> **Note**: a) Filled application forms may be submitted in person at or sent by post to the following address so as to reach on or before **by 5.00 P.M. on 06-07-2005** (application if received after due date will not be considered and automatically rejected)
>
> **The Chairman, U.G. Admission Committee, NTR University of Health Sciences, Vijayawada**
> **520 008.**
>
> b) Applications unaccompanied by required certificates or applications with incomplete entries and ineligible applications shall stand rejected automatically. Please do not leave any column blank. Where information is Nil write NO/NIL.
>
> c) Applications of the candidates who furnish incorrect information or enclose false/incorrect certificate shall stand

rejected automatically.

d) Candidates shall not be permitted to change their social status or local candidature etc., after submission of application form.

e) Application shall be filled in English by the candidate in his/her own handwriting.

f) No enclosures will be accepted after submission of application form".

23. Clauses (b) (d) and (f) get straightaway attracted to the case of the 7th respondent. It is a matter of record that her application was not accompanied by the study certificate for the classes 6th to 9th. In the application she claimed that she belongs to Andhra University area. Under clause (c) of the note, she was precluded from changing the local candidature. Though clause (f) mandated that no enclosures will be accepted after submission of the application form, the University officials have received the crucial study certificate for classes 7th and 8th, not only after the submission of the application form, but even after the conclusion of the counselling. There was no justification for the University in entertaining the claim of the 2nd respondent, even though her application was not accompanied by the requisite certificates. They have deliberately flouted the procedure, in permitting the petitioner to submit a crucial certificate, which was issued by the concerned school on 31-07-2005. On the basis of this certificate, they have changed the local candidature of the petitioner from the Andhra University area to Osmania University area. On account of this, the writ petitioner was denied admission in 1st year of M.B.B.S. and was allotted a seat in 1st year of B.D.S. Course.

24. It is settled principle of law that where a particular thing is required to be done in a particular manner, it shall be done in that manner, or not at all. Rules cannot be bent, to accommodate an otherwise unsustainable claim.

25. Therefore, the action of the University authorities in allotting a seat in favour of the 7th respondent in 1st year of M.B.B.S. cannot be sustained.

26. The natural consequences of the discussion undertaken above would have been to set aside and cancel the admission of the 7th respondent in its entirety. In view of the judgment in ***Medical Council of India v. Madhu Singh*** the resultant seat cannot be allotted to a fresh candidate, at this stage. However, the said judgment does not prohibit internal adjustments, even after the prescribed date. Therefore, there would not be any legal impediment for accommodating the petitioner in W.P**.** 17172 of 2005 against the seat that was allotted to the 7th respondent. The seat in 1st year of B.D.S. that may be vacated by the writ petitioner cannot be allotted to anyone, at this stage. Instead, it can be made available to the 7th respondent. This exercise is undertaken solely with a view to ensure that the seat in B.D.S. course does not go waste.

27. For the foregoing reasons, W.P.Nos.16995 and 17455 of 2005 are dismissed, and W.P.No.17172 of 2005 is allowed declaring that,

a. the selection and admission of the 7th respondent against the seat in First Year of M.B.B.S. reserved for sports category in the Osmania Universtity area is illegal and untenable.

b. The seat that becomes vacant on account of the cancellation of the admission of the 7th respndent shall be allotted to the petitioner, and the seat that may be vacated by the petitioner in the First Year of B.D.S. course, shall be made available to the 7th respondent.

c. The concerned authority shall undertake necessary steps for adjustment of the fee required for the respective courses, and the whole exercise shall be completed within a period of two weeks from the date of receipt of a copy of this judgment.

d. There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt. 15–11-2005.

Note:

L.R. copy to be marked

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